

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

PHILLIP APODACA,

Plaintiff,

v.

MID-WESTERN CAR CARRIERS, INC.,

Defendant.

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CASE NO.: 3:22-cv-1580

JUDGE:

**NOTICE OF REMOVAL OF CIVIL
ACTION BY DEFENDANT COREY
SUGGS**

Defendant, Corey Suggs, by and through counsel and pursuant to 28 U.S.C. § 1441, 28 U.S.C. § 1446, AND 28 U.S.C. § 1332, respectfully submits Notice of Removal of Civil Action. In support of its Notice, Corey Suggs states the following:

1. On July 11, 2022, Plaintiff, Philip Apodaca (hereinafter “Plaintiff”), filed a Complaint in the Court of Common Pleas, Lucas County, Ohio and captioned *Philip Apodaca v. Mid-Western Car Carriers, Inc., et al.*, Case No. G-4801-CI-0202202991-000. (A true and correct copy of the Complaint is attached hereto as Exhibit A).
2. On August 18, 2022, Corey Suggs was made known of the Complaint and accepted service on this date.
3. Plaintiff filed his First Amended Complaint, adding Westfield Insurance Company (hereinafter “Westfield”) as a Defendant. (A true and correct copy of the Complaint is attached hereto as Exhibit B).
4. Westfield’s principal place of business is in Westfield Center, Ohio. (Exhibit B, at ¶ 6).

5. Westfield was named as having a medical payments subrogation interest, having made payments on behalf of Plaintiff. (Exhibit B, at ¶¶ 26-27).
6. Where an action is removed based on diversity jurisdiction, complete diversity between Plaintiff and Defendants must exist at the time of removal. *Conye v. American Tobacco Co.*, 183 F.3d 488, 492 (6th Cir. 1999).
7. “Diversity jurisdiction attaches only when all parties on one side of the litigation are of a different citizenship from all parties on the other side of the litigation.” *Boladian v. UMG Recordings, Inc.*, 123 Fed. Appx. 165, 167 (6th Cir. 2005) (quoting *SHR Ltd. Partnership v. Braun*, 888 F.2d 455, 456 (6th Cir. 1989).
8. The United States Court of Appeals for the Sixth Circuit adopted the “principal purpose” or the “primary dispute” test for determining alignment of the parties. *United States Fidelity and Guaranty Co.*, 955 F.2d 1085.
9. Under the standard establish by the Court, parties should be “aligned in accordance with the primary dispute in the controversy...” *Id.*, at 1089.
10. Therefore, the Court should look at the “principal purpose of the suite and the primary and controlling matter in the dispute” when determining how parties should be aligned. *Id.*, at 1090.
11. Even though Westfield is listed as a Defendant by Plaintiff in the subject matter Amended Complaint, subrogation interest of an insurer aligns with Plaintiff where the only claim is with reference medical payments made under a policy of insurance thus becoming a subrogated interest and not a lien as claimed by Plaintiff.

12. The Notice of Removal is filed within thirty (30) days of acceptance of service of the Complaint and is therefore timely under 28 U.S.C. § 1446(b)(3).
13. The United States District Court for the Northern District of Ohio has diversity jurisdiction over this case under 28 U.A.C. § 1332. There is complete diversity of citizenship between the parties. Removal is proper because:
 - a. Plaintiff is an Ohio resident (See Complaint, Exhibits A, at ¶ 1).
 - b. Defendant, Mid-Western Car Carriers, Inc. is incorporated in Missouri with its principal place of business in Missouri. (Exhibit A, at ¶ 2).
 - c. Defendant, Corey Suggs is a resident of North Carolina. (Exhibit A, at ¶ 4).
 - d. Westfield's interest is better aligned with Plaintiff.
 - e. Defendant Mid-Western Car Carriers, Inc. consent to removal of this action.
 - f. The amount in controversy in this case exceeds \$75,000. While the Complaint is silent as to the particular amount in controversy, it is apparent the amount in controversy exceeds the minimum jurisdictional amount. Plaintiff provided a single medical bill prior to litigation that far exceeds \$75,000.
 - g. Accordingly, this action may be removed to this Court pursuant to 28 U.S.C. § 1441 and 1446(c).
14. Pursuant to 28 U.S.C. § 1446(d), written notice of this Notice of Removal is being filed with the Clerk of the Lucas County Court of Common Pleas and served on counsel for Plaintiff.
15. All pertinent Lucas County Court pleadings are attached hereto.

16. Pursuant to 28 U.S.C. § 1391, venue is proper in the United States District Court for the Northern District of Ohio, Western Division because the location at which Plaintiff allegedly suffered his injuries is located in Lucas County, and therefore, a substantial part of the alleged events and omission giving rise to Plaintiff's claims purportedly occurred within this judicial district. (*See generally*, Complaint).

WHEREFORE, Defendant, Corey Suggs, pray that this action be removed from the Lucas County Court of Common Pleas to the United States District Court for the Northern District of Ohio, Western Division and requests this Court assume full jurisdiction over the cases herein as provided by law.

Respectfully submitted,

/s/ Tina Taylor Thomas

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Attorney for Defendants, Mid-Western Car Carriers, Inc., and Corey Suggs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically in accordance with this Court's electronic filing guidelines on the 7th day of September, 2022. Notice of this filing will be sent to those listed below via this Court's electronic filing system or, will be served by ordinary U.S. Mail, postage pre-paid, upon counsel or parties who are not sent electronic notification.

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